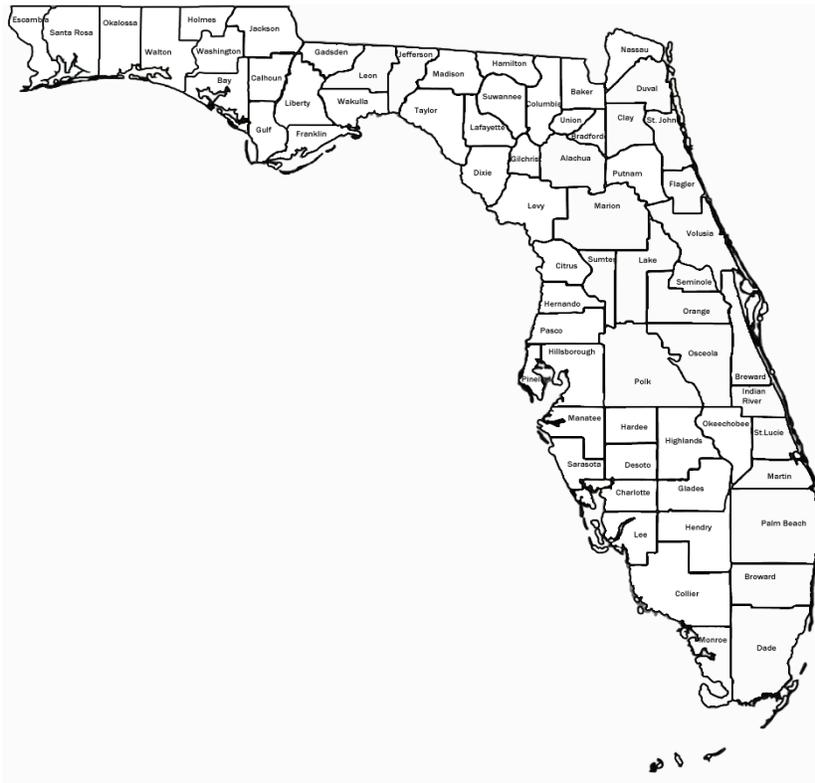


# FLORIDA MEDIATION BEST PRACTICES HANDBOOK

Dedicated to the litigants, lawyers, mediators and judges of the State of Florida.



**FIRST EDITION**

## INTRODUCTION

Mediators and trial lawyers of the Hillsborough County Bar Association (HCBA) engaged in a historic collaboration to create the first *Florida Mediation Best Practices Handbook* to make mediation more efficient and productive. This collaboration occurred during a world-wide pandemic where jury trials came to a halt for over a year and judges and court administrators struggled to find a proper balance between public health and the right to a jury trial. Nearly all legal proceedings quickly transitioned to “virtual” events, including mediation. With civil jury trials suspended, the resulting backlog of over 1.5 million cases in Florida made mediation more critical than ever to protect the rights of litigants and preserve the continued administration of justice.

These unprecedented challenges have led to a need for more productive approaches to mediation. In response, mediators and trial lawyers of the HCBA created *the Florida Mediation Best Practices Handbook* for lawyers and mediators to become better partners with each other and their clients. A survey was circulated to collect the best ideas available, and over 200 lawyers, mediators, judges and legal assistants from across the country contributed their advice for improving mediation outcomes.

The survey was followed by the first ever “Mediator Litigator Forum” to discuss ways to improve the mediation process. Thereafter, a panel of six persons, three mediators and three trial lawyers, including a former judge, assembled the *Florida Mediation Best Practices Handbook*. When contested issues arose, they were resolved by a majority vote. The panel’s work was guided by the ethical rules and statutes of the State of Florida governing mediation. (Unless otherwise indicated, the term “Rule” applies to the Florida Rules for Certified and Court-Appointed Mediators.)

This project could not have been accomplished without significant cooperation. Thanks go out to the members of the panel for their outstanding commitment: Judge Martha Cook, Chad Moore, Harold Oehler, Cory Person, Tom Scarritt, and Dale Sisco. Many thanks to HCBA President Paige Greenlee and Executive Director John Kynes, and his staff, for their leadership and support. Special thanks also go out to Kim Joyner-Diaz, Greg Kehoe, Bobby Santos, Ellen Shulman, The Honorable Judge Rex M. Barbas and The Honorable Chief Judge Ronald Ficarrota, who provided insight during the creation of the Handbook. The greatest thanks, however, go to the more than 200 legal professionals who contributed their ideas to empower litigants to choose their own outcomes by resolving their disputes through mediation.

Our vision is that you will play a unique role in the development of the *Florida Mediation Best Practices Handbook*, which will continue to be updated with suggestions and insights which we hope you will continually share with us. Your suggestions may be submitted to the Chair of the HCBA Section for Mediation and Arbitration who will collect recommendations throughout the year for the Handbook’s periodic revision. In that way, the *Florida Mediation Best Practices Handbook* will continue to be a living document that we believe will provide the most

contemporary insights and benefits to mediators, lawyers and litigants throughout the State of Florida.<sup>1</sup>

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Chad Moore, Chairman  
Trial & Litigation Section  
Hillsborough County Bar Association

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Harold Oehler, Chairman  
Mediation & Arbitration Section  
Hillsborough County Bar Association

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Paige Greenlee  
President  
Hillsborough County Bar Association

September 10, 2021

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<sup>1</sup>The guidelines and suggestions contained in this Handbook are intended to be used and/or implemented in a manner consistent with the rules and statutes governing mediation. To the extent any of the guidelines contained herein are inconsistent with a rule or statute, the rule or statute is to be followed.

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## I. MEDIATION BEST PRACTICES FOR THE MEDIATOR

### A. PRE-MEDIATION

#### 1. Scheduling

- Ensure that your website contains an up-to-date calendar, biography or resume, and rates and terms.
- Disclose and resolve any potential conflicts of interest immediately. (Rule 10.340)
- Decline an appointment, withdraw, or request appropriate assistance when a case is beyond your skill or experience. (See Rule 10.640)
- Promptly deliver the documents confirming the mediation and describing your rates and terms.<sup>2</sup> Provide clear terms and instructions regarding any deposit, cancellation, postponement, fee split, payment terms, etc. (See Rule 10.380)
- In your correspondence accepting the assignment, courteously remind counsel to file a Certification of Authority as required by Rule 1.720(e) of the Florida Rules of Civil Procedure.
- Promptly respond to emails and telephone messages.
- Communicate to attorneys and legal staff in a courteous and professional manner. (Rule 10.350)
- Do not schedule more than one circuit court mediation during a morning and one in an afternoon. (See Rule 10.430)
- It is generally not advisable to state an end time for a mediation. (See Rule 10.430)
- Offer to file the Notice of Mediation<sup>3</sup> to save the scheduling party time. Serve all parties, including the individual scheduling the mediation. If you do not file the Notice of Mediation, confirm who will do so.
- Be flexible and client friendly regarding rescheduling and cancellation fees.
- Virtual Mediations: Send invitations, including log-in instructions, as early as possible.

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<sup>2</sup>See Attachment 3: “Mediation Confirmation Letter and Attachment 4: “Mediation Engagement, Confirmation and Disclosure Agreement.

<sup>3</sup>See Attachment 1: “Notice of Mediation – In Person” and Attachment 2: “Notice of Virtual Mediation”

## 2. Preparing for Mediation

- Identify and understand the factual and legal issues involved and the applicable law.
- Review the court file and materials submitted by the parties. If a party does not provide a mediation summary, request relevant pleadings, discovery responses, medical or damages summaries, etc.
- Call each party's counsel prior to mediation to discuss the case, the parties involved, the issues, each party's Best Alternative to a Negotiated Agreement, prior negotiations, potential settlement options and obstacles to settlement.
- Confirm that a party representative with authority to settle the case will be present.
- If there are additional documents or other information which would be helpful during the mediation, request that counsel provide the information to the mediator and the other side.
- Take time before the mediation to analyze each party's position and interests.
- After speaking with counsel for each party, the mediator should develop and utilize an individualized mediation strategy based on the unique interests, parties and circumstances involved.
- Study methods to encourage cooperation among parties with competing interests.<sup>4</sup> (Rule 10.630)
- Virtual Mediations: Be well versed in the virtual platform's technology, security settings and the process for handling common problems such as a lost connection. (Rule 10.630 and Rule 10.640) Confirm how the parties will execute the settlement agreement prior to the mediation. (Rule 10.420 (c))

### B. BEST PRACTICES THAT APPLY TO THE ENTIRE MEDIATION

- **Ethical Cannon of Self-Determination:** Mediation is a process to facilitate agreement between conflicting parties and assist them in voluntarily resolving their dispute. A parties' right to self-determination (a free and informed choice to agree or not agree) must be preserved during all phases of the mediation. (See Rule 10.310)
- The mediator's role includes, but is not limited to, assisting the parties in identifying issues, discussing the strengths and weaknesses of positions,

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<sup>4</sup>See Attachment 10: Recommended Reading List.

fostering joint problem solving and exploring settlement alternatives. (Fla. Stat. §44.1011 (2) and Rule 10.220 and 10.370)

- A mediator must neither substitute his/her judgment for the judgment of the parties, nor coerce or compel a party to make a decision. The mediator must also not allow a participant to make a decision based on misrepresented facts, or in any other way impair the parties' right of self-determination. (See Rule 10.310 and Committee Notes)
- The mediator should strive to maintain an accommodating, confident and optimistic attitude throughout the mediation; use active listening to understand the goals of the parties and reframe the communication when necessary to promote understanding. (See Rule 10.300 and Rule 10.350)
- Include the client representatives in the process.
- Be flexible and facilitate communication in the manner the parties wish to promote self-determination. (see Rule 10.310)
- Take the opportunity to build a personal relationship by speaking to the parties and attorneys when the opportunity arises before or during the mediation. This is particularly important during a virtual mediation where rapport is harder to establish.
- Provide coffee, soda, water, snacks, candy, etc. The more comfortable the parties are, the longer they will work on resolving the dispute.
- Treat every person during the mediation with civility and professionalism. (Rule 10.350)
- Don't rush the parties through any portion of the mediation. Don't terminate the mediation due to the time of day or other commitments. This may be the only opportunity for the parties to mediate their case.
- Virtual Mediation: Host the virtual mediation and disable the recording function. Ensure that all participants are visible while conferring with the mediator and the other party. Provide alternative communication options in case a connection is lost. For example, exchange telephone numbers or utilize a telephone conferencing system, if necessary.

### **C. JOINT CAUCUS AND OPENING STATEMENTS BY THE MEDIATOR AND PARTIES**

- Assemble the parties for a joint session, including Opening Statements, to give the parties the opportunity to speak to each other and start building a working relationship to help them work towards a settlement.
- When discussing confidentiality, explain that you will not share information with another party without the disclosing party's consent. (see Rule 10.360)

- Present the mediator’s opening statement in an optimistic and confident fashion.
- Keep the mediator’s opening succinct. Don’t rush through the opening, but include the mediator’s background and familiarity with the type of case involved, neutrality, confidentiality, self-determination, certainty, cost savings and explanation of the process. Specifically, explain that you as a mediator are neutral and solely focused on helping the parties reach a settlement. Explain that all communications during mediation are strictly confidential. (see Rule 10.420)
- During the mediator’s opening, encourage the parties and their attorneys to communicate with each other.
- Emphasize that the parties have the ability to decide their own outcome and that they will surrender that power if they go to trial. Also point out that mediation allows parties to choose creative solutions not available at trial which can be implemented immediately.
- Explain that Plaintiff traditionally speaks first since Plaintiff filed the suit.
- Encourage the parties to give civil, non-adversarial opening statements. (See Rule 10.210).
- Encourage the parties to listen to the other side, even though they won’t agree with everything they hear, so they are prepared for what would be argued at trial. Point out that most parties who settle continue to disagree on many issues but are still able to settle.
- Actively listen to the opening statements, and what the parties communicate in each caucus, and search for the answer to the questions: *“What are the priorities for each party?”* and *“What’s really driving this dispute?”* Sometimes the answer is as simple as the need to be heard, validated or respected.
- Keep the discussions focused on relevant matters.
- Diffuse an argumentative opening statement by restating the party’s position in a non-emotional fashion. (See Rule 10.410)

#### **D. CAUCUSES**

- Ask each side to describe a reasonable, positive outcome from their point of view and list priorities for settlement. Priorities should be periodically discussed as they may change during the mediation.
- A mediator may raise issues, discuss the strengths and weaknesses of the parties’ positions and help parties evaluate settlement options. (See Rule 10.370 and Committee Notes) Consider asking each side “How” and

“What” questions to gently point out weaknesses, i.e. “What information will you use to support this point?”

- Build trust by being empathetic and honest. (See Rule 10.350)
- Speak to every counsel and individual attending the mediation in a manner that makes them feel comfortable, heard and respected. Be sensitive to different levels of sophistication and experience. (see Rule 10.350 and 10.670)
- Identify the motivations behind each position and demonstrate that you understand by repeating, reframing and/or clarifying the party’s position.
- Inquire whether a non-party’s interest will be impacted by any settlement. (See Rule 10.300)
- Determine whether a party representative or other mediation participant is impeding settlement and explore their reservations.
- Be creative and affirmatively seek out alternative solutions from the parties.
- Create momentum by obtaining agreement on small issues first.
- When a party suggests making a counter-productive offer, help the party think through the consequences of that offer before it is delivered.
- During long caucuses, check in with each side periodically to keep them informed and engaged.
- Preparation, patience and persistence are essential. Work with the parties on their timetable.
- Consider using a red pen or other distinctive means to distinguish information which may not to be disclosed to the other side.
- At the end of each caucus, reiterate 1. the offer and any message to be delivered and 2. the information which may and may not be disclosed.

**E. CROSS CAUCUS**

- A cross caucus is a private caucus exclusively between the mediator and the attorneys or between the mediator and the client representatives. The possibility of a cross caucus should be introduced during the mediator’s opening and utilized only with the parties’ permission.
- Do not overuse cross caucuses as this may alienate the excluded individuals. Cross caucuses are typically used towards the end of a mediation to negotiate a small number of issues or to negotiate the settlement agreement.

## **F. AFTER A SETTLEMENT IN PRINCIPLE OR AN IMPASSE IS REACHED**

### **1. After a Settlement in Principle is Reached**

- Consider maintaining templates of settlement agreements for common cases.<sup>5</sup>
- Encourage the parties to draft and execute the final agreement before leaving the mediation.
- Establish clear conditions for the dismissal of the suit.
- Identify who is responsible for paying mediation costs.
- Virtual Mediations: Be proficient with screensharing for real-time editing of the settlement agreement and consider having technology available, such as DocuSign or Adobe, to execute the agreement electronically.

### **2. After an Impasse**

- Discuss the option of continuing the mediation, rather than declaring an impasse, when that appears to be beneficial.
- Consider offering to send a mediator's proposal with both side's permission. Each side's response is only revealed if the proposal is accepted by all parties.
- Offer to follow up with the parties periodically at no charge to see if a settlement dialogue can be rekindled. If settlement talks re-commence, offer to mediate again.

## **G. POST MEDIATION**

- Promptly file the Mediator's Report<sup>6</sup> with the court and send the parties a copy as well as the Final Statement and a signed W-9.
- If there is an impasse, follow up with counsel to attempt to re-initiate settlement discussions.
- Obtain a fully executed copy of the Settlement Agreement even if it is signed after the day of the mediation.

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<sup>5</sup>See Attachment 5: "Settlement Agreement and Stipulation of Parties (Presuit Mediation)" and Attachment 6: "Settlement Agreement and Stipulation of Parties (Claim in Litigation).

<sup>6</sup>See Attachment 7: "Mediator's Results Report" (State) and Attachment 8: Mediation Report (Federal)

## II. MEDIATION BEST PRACTICES FOR THE TRIAL LAWYER

### A. PRE-MEDIATION

#### 1. Scheduling

- Promptly respond to emails and phone calls and communicate with attorneys, legal staff and parties in a courteous and professional manner.
- Confirm the parties' selection of mediator.<sup>7</sup> Identify who will be filing the Notice of Mediation.<sup>8</sup>
- Promptly advise the mediator where the case is pending so the mediator can locate the pleadings.
- File the Certification of Authority required by Fla.R.Civ.Pro.1.720(e), identifying the party representatives and confirming that they have adequate authority. Serve the Certification on the parties and the mediator.
- Reserve sufficient time for the mediation. If uncertain about the amount of time needed, confer with opposing counsel and the mediator.
- Virtual Mediation: Provide name, positions and email addresses of all individuals who will need invitations from the mediator.

#### 2. Preparing for the Mediation

- Prepare for the mediation by identifying and understanding the factual and legal issues in dispute and the applicable law.
- Counsel should prepare a case evaluation and cost of litigation analysis. Defense counsel should share those documents with the client and adjuster, where applicable, before authority is determined.
- In personal injury cases, research bills and liens prior to mediation. Share this information with the mediator and the other side in advance.
- Confirm that the real decision maker will be involved in the mediation.
- Prepare a draft settlement agreement with blanks for key terms.
- Meet with the client to prepare him or her for the mediation process and explain the mediator's role, if necessary.
- During the client meeting, gather information about the client's current willingness to settle, the personalities involved on both sides, impediments

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<sup>7</sup>See Attachment 9: "Mediation Stipulation and Agreement."

<sup>8</sup>See Attachment 1: "Notice of Mediation – In Person" and Attachment 2: "Notice of Virtual Mediation"

to settlement, Best Alternative to a Negotiated Agreement (BATNA) for *all* parties and creative settlement options.

- Ask your client what a good settlement looks like, what terms are essential (modify draft agreement if necessary), what circumstances may make settlement more desirable and whether there are any “deal breakers” which the other side may demand. Where applicable, ask the client if there is an ongoing relationship with the other side that may impact settlement.
- Review the draft settlement agreement with the client. Discuss the best and worst-case scenarios for trial and settlement, including costs.
- Set reasonable expectations and remind the client that compromise will be necessary. Prepare the client to keep an open mind and conduct themselves to engender trust and cooperation from the other side.
- Educate the client about the importance of allowing the other side to speak, without interruption, and to avoid argument, which is counterproductive to reaching a settlement. Advise the client that disagreements will be dealt with diplomatically with the mediator’s assistance.
- If the client representative is articulate and sympathetic, consider allowing him or her to speak, particularly where there is a relationship with the other side.
- If the client will speak during the mediation, practice with the client.
- If you don’t have critical information necessary for meaningful settlement discussions, then request the information from opposing counsel before the mediation. The mediator may assist with making this request.
- Prepare a confidential mediation summary that briefly describes the case status, factual and legal issues in dispute, prior offers, impediments to settlement and a description of damages.
- If a legal issue is impeding settlement, attach case law or other authority to the mediation summary with the relevant sections highlighted.
- A less expensive alternative to a mediation summary is to send the mediator relevant pleadings, documents and a summary of prior offers.
- Prior to the mediation, call the mediator to discuss the case, the parties, the issues, prior negotiations (demands, offers, proposals for settlement, etc.) and obstacles to settlement.
- Virtual Mediations: Confirm that each individual attending the mediation has acceptable equipment and knows how to use the technology. Confirm the security settings to be used when speaking to the mediator, such as enabling the waiting room and disabling the recording function.

## **B. BEST PRACTICES THAT APPLY TO THE ENTIRE MEDIATION**

- **Ethical Canon of Self-Determination**: Mediation is a process to facilitate consensual agreement between parties in conflict and assist them in voluntarily resolving their dispute. A parties' right to self-determination (a free and informed choice to agree or not agree) must be preserved at all times. (See Rule 10.310 and Committee Notes).
- "The best general is the one who never fights." -Sun Tzu, *The Art of War*. Resist the urge to argue during the mediation and instead build trust and cooperation from the other side by truly listening to their position. Try to discern the other side's needs and create proposals that address those needs. Focus on areas of mutual interest and agreement. Allow the mediator to raise contentious issues in private caucus. Every action you make should demonstrate that you and your client are at the mediation to work with the other side to pursue a mutually beneficial resolution.
- Use Mediation Advocacy instead of Trial Advocacy during the mediation.<sup>9</sup> Mediation Advocacy is the skill of presenting a client's position, needs and interests in a non-adversarial manner to persuade the other side by using active listening, empathy and problem solving instead of argument.
- Be certain of the accuracy of each statement made during the entire mediation process. (See Rule 4-4.1 of the Florida Rules of Professional Conduct and Rule 10.310(c)).
- Patience is one of the most important traits for mediation success. Be patient when listening to the other side and responding to offers.
- Treat every person during the mediation with civility and professionalism.

## **C. JOINT CAUCUS AND OPENING STATEMENTS OF COUNSEL**

- The goal of opening statement is to earn the trust and respect of the other side and promote cooperation by demonstrating empathy and a sincere interest in resolving the issues while avoiding inflammatory and offensive statements.
- Begin the Opening Statement with a story that explains the critical events from your client's point of view and introduces a compelling theme. Conclude the Opening Statement by committing to work with the other side and the mediator to explore options to resolve the dispute.

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<sup>9</sup>See Attachment 10: Recommended Reading List.

- Consider raising contentious or sensitive topics in private caucus to avoid creating conflict or embarrassing the other side. The mediator may assist you by raising these issues diplomatically in private caucus.

#### **D. CAUCUSES**

- Parties often mirror the amount of movement made by the opposing party's offers. Consider making offers that demonstrate a sincere desire to resolve the dispute as this will create trust and credibility with the other party and generate greater movement.
- Whenever possible, send an explanation that provides a rational, objective basis for the offer.
- Consider requesting a joint discussion with the other party or parties to work through settlement issues and impediments.
- Engage the client representative in the discussion and encourage them to suggest potential solutions.
- If raising a certain type of proposal will compromise a party's negotiating position, consider asking the mediator to raise the proposal.
- At the end of each caucus, have the mediator repeat the offer and any message he will deliver and reiterate what will not be disclosed.

#### **E. CROSS CAUCUS**

- A cross caucus is a private caucus exclusively between the mediator and the attorneys or between the mediator and the client representatives. The possibility of a cross caucus should be introduced during the mediator's opening and utilized only with the parties' permission.
- Use the cross caucus sparingly as excessive use may alienate the individuals excluded from the discussions.
- This tool is effectively used to resolve a small number of issues by a meeting between counsel or between client representatives. It is also useful to negotiate the terms of the settlement agreement. A joint caucus may alternatively be used.

#### **F. AFTER A SETTLEMENT AGREEMENT OR AN IMPASSE IS REACHED.**

##### **1. After a Settlement has been reached in principle**

- To avoid buyer's remorse, urge the parties to draft and execute the final settlement agreement before leaving the mediation.

- Virtual Mediation: Have technology, such as DocuSign or Adobe, available to allow the parties to sign the agreement electronically.
- Ensure that the client is aware of the amount of their net recovery.

## **2. After an Impasse**

- Consider continuing the mediation to a specific date, rather than declaring an impasse.
- Consider agreeing to reconvene after a dispositive motion is decided or after additional discovery is obtained, if either caused the impasse.
- Propose non-binding arbitration if this may help clarify issues causing the impasse.
- Ask the mediator to periodically follow up with the parties to see if a settlement dialogue can be rekindled. If settlement talks re-commence, propose mediating again.

## **G. POST MEDIATION**

- Consider serving a Proposal for Settlement with your last offer.
- Consider contacting the other party to discuss if further talks would be fruitful or enlist the mediator's assistance to do so.
- Set the case for trial.

**ATTACHMENT "1"**

**NOTICE OF MEDIATION**

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA  
CIVIL DIVISION

Plaintiff

vs.

Case No:

Division:

Defendants,

\_\_\_\_\_ /

**NOTICE OF MEDIATION**

PLEASE BE ADVISED that this case has been scheduled for mediation to be held before  
\_\_\_\_\_, Esquire on:

**DATE & TIME:** \_\_\_\_\_, \_\_\_\_\_, 20\_\_, at \_\_\_ a.m./p.m.

**LOCATION:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Respectfully Submitted,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed electronically with the Clerk of Court utilizing Florida Court's E-Filing Portal system and in compliance with Florida Rules of Judicial Administration 2.515 and 2.516(3) on \_\_\_\_\_, 20\_\_\_\_, which will automatically transmit an electronic copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Attorney

**ATTACHMENT "2"**  
**NOTICE OF VIRTUAL MEDIATION**

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA  
CIVIL DIVISION

Plaintiff

vs.

Case No:

Division:

Defendants,

\_\_\_\_\_ /

**NOTICE OF VIRTUAL MEDIATION**

PLEASE BE ADVISED that this case has been scheduled for mediation to be held before  
\_\_\_\_\_, Esquire on:

**DATE & TIME:** \_\_\_\_\_, \_\_\_\_\_, 20\_\_, at \_\_\_ a.m./p.m.

**VIRTUAL MEDIATION INFORMATION:**      **Meeting link to be provided.**

Respectfully Submitted,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed electronically with the Clerk of Court utilizing Florida Court's E-Filing Portal system and in compliance with Florida Rules of Judicial Administration 2.515 and 2.516(3) on \_\_\_\_\_, 20\_\_, which will automatically transmit an electronic copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Attorney

**ATTACHMENT "3"**

**MEDIATION CONFIRMATION LETTER**  
**CASE NUMBER:**

Attached please find the Mediation Engagement, Confirmation and Disclosure Agreement setting forth the terms and conditions of the above-referenced mediation as well as the policies of this office.

Please also refer to our website, \_\_\_\_\_, for additional information on our mediation practice, office procedures, logistics, and in particular, questions about our location and parking. The website includes an Intro to Mediation which can be shared with clients unfamiliar with the mediation process.

The mediation is scheduled for four (4) hours unless otherwise agreed to and confirmed in writing.

If scheduled at our facility, our address is \_\_\_\_\_. Our office is located in \_\_\_\_\_.

Please forward any mediation summary or any other records or reports that may be relevant to the issues of this case and helpful in my preparation for this mediation.

Thank you again for selecting me as your Mediator, and I look forward to working with you to resolve the issues between the parties.

Very truly yours,

**ATTACHMENT "4"**

**MEDIATION ENGAGEMENT, CONFIRMATION AND DISCLOSURE AGREEMENT**

**CASE NUMBER:**

This Agreement will confirm that a mediation conference in the above case has been scheduled for \_\_\_\_\_.

**The conference will be held at** \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, **Florida** \_\_\_\_\_. The Mediator will be \_\_\_\_\_, Esquire, Certified Florida Circuit Civil and Federal Court Mediator. The engagement for mediation services is with the understanding that this Agreement will control and govern the terms and conditions of the Mediation.

**SCHEDULE**

**Mediations are reserved/scheduled in 4 hours slots for morning or afternoon sessions. If you wish to reserve more than 4 hours or all day please let us know, and confirm it in any Notice or other written confirmation of the mediation. Otherwise, we assume only 4 hours is reserved.** This will help avoid scheduling conflicts.

**FEES**

Mediation time will be charged at the rate of \$\_\_\_\_\_ per hour (\$\_\_\_\_\_ per hour, per side for two party mediations). For "multiparty" mediations with three (3) sides, the rate is \$\_\_\_\_\_ per hour, per side, and mediations with four (4) or more sides will be billed at the rate of \$\_\_\_\_\_ per hour, to be divided evenly between the sides. "Sides" refers to parties with opposing positions in the mediation, i.e. co-defendants, represented by the same counsel, whose positions are not adverse usually constitute one "side." The term "Parties" herein refers to the named parties to the litigation as well as any interested parties voluntarily participating in the mediation process. The mediator is entitled to compensation for all time spent on the case including but not limited to preparation time, telephone conferences, attendance at the mediation conference, follow-up, collection efforts (including but not limited to attorney fees and costs), preparation of the parties' agreement and the Mediation Report to the Court. Travel time is billed at one half (1/2) of the hourly rate.

Parties agree to waive any part of a Court order inconsistent with the afore-mentioned hourly rates. Please note that these fees include reasonable and necessary expenses incurred by the mediator such as clerical, local telephone, local fax charges, postage costs, etc., but we reserve the right to charge for extraordinary expenses.

There is a three (3) hour minimum charge for all mediations, except if a full eight-hour day is reserved which will require a six (6) hour minimum charge, unless the mediator agrees to the

contrary in writing. The participating sides shall divide mediation fees equally, unless the parties agree to a different apportionment of costs in writing.

### **CANCELLATION POLICY**

The mediator in this case has been engaged to conduct this mediation. As such, we are accepting this engagement to the exclusion of scheduling other work for the day and the time which has been reserved. Due to the difficulty of scheduling a new case when there is a cancellation, the time and expenses already incurred in scheduling and preparing for the cancelled conference, and the positive effect a scheduled conference can have in settlement negotiations, the following policies have been adopted:

In the event this mediation is cancelled within 48 hours of the scheduled mediation conference, there will be a three (3) hour minimum charge divided by all sides. Unless the parties in the case agree on who should pay the cancellation fee, all parties, through their attorneys, if any, shall be financially responsible for their share. All cancellations should be communicated in writing, by email, with the agreement of all parties and counsel, if any, noted.

### **PAYMENT**

*Law firms and lawyers – not their clients – will be billed and are responsible for the Mediation bill.* Payment is due within 10 days of the date of the bill and is not conditioned on settlement, receipt of settlement funds or payment by a client. Past due bills will accrue interest at the highest legal rate and will result in additional charges for time and fees spent on collection.

Pro se parties (those not represented by attorneys) must pre-pay a \$500 deposit or bring a check to the mediation.

### **APPLICABLE LAW, CONFIDENTIALITY & MEDIATOR IMMUNITY**

Whether Mediation is pre-suit, Court ordered or voluntary, the Mediation Confidentiality and Privilege Act (§§44.401, et seq. Fla. Stat.), Fla. R. Civ. P. 1.700, et seq and/or Federal Rules of Civil Procedure, (and local rules of Court in the District which the case is venued) shall apply. All Mediation Communications are confidential. Mediators are immune from liability, including all forms of negligence, arising from performance of Mediation work. Mediators are immune from providing written, deposition or trial testimony relating in any way to any Mediation conducted by them.

### **ATTENDANCE & SETTLEMENT AUTHORITY**

Mediators have no role in or responsibility for compliance with, enforcement of, or sanctions associated with Fla. R. Civ. P. 1.720, pertaining to Mediation appearance, attendance or settlement authority of any party, party representative, counsel of record, or insurance carrier representative.

### **ACCEPTANCE OF TERMS**

IF YOU OBJECT TO ANY TERMS OF THIS LETTER, CONTACT ME IN WRITING, BY EMAIL, WITHIN 5 BUSINESS DAYS OF THE EMAIL CONVEYING THE LETTER. OTHERWISE, ALL TERMS SHALL BE DEEMED ACCEPTED BY THE RECIPIENTS OF THIS LETTER, THEIR CLIENTS AND ANYONE ATTENDING MEDIATION WITH THEM. COMMENCEMENT OF MEDIATION AND ENGAGEMENT OF THE MEDIATOR ARE WITH THE EXPRESS UNDERSTANDING AND AGREEMENT OF THESE TERMS.

Thank you again for engaging my mediation services. I look forward to working with you. Please let me know if you have any questions or need assistance.

**ATTACHMENT "5"**

**SETTLEMENT AGREEMENT AND STIPULATION**

**(PRESUIT MEDIATION)**

RESPONDENT/INSURED: \_\_\_\_\_

CLAIMANT: \_\_\_\_\_

CLAIM NUMBER: \_\_\_\_\_

DATE OF LOSS: \_\_\_\_\_

**SETTLEMENT AGREEMENT AND STIPULATION OF PARTIES**

Pursuant to the Mediation Conference held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, the parties have agreed to the following:

1. \_\_\_\_\_ shall pay to \_\_\_\_\_ the sum of \$\_\_\_\_\_ to be distributed as follows:

2. Said Settlement sums to be paid within \_\_\_\_ days from the date of this stipulation.

3. The Claimant(s)/Releasor(s) shall execute and deliver General Releases, releasing any and all claims that they have or may have in the future against Releasees, arising out of the facts involved in the present dispute of the parties, namely:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

4. Claimant(s) shall execute and deliver to Respondent(s)' undersigned attorney general releases and indemnification agreements which hold Respondent(s) and his/her/its insurance company(ies) harmless from any third-party liens or claims for which Claimant(s) is legally liable. Claimant(s) shall be responsible for satisfying any and all liens which might apply to these settlement proceeds.

5. Each party shall pay their own costs and fees. Mediation fees shall be paid equally by each side and are payable within ten (10) business days of the mediation.

6. The parties hereby stipulate that the mediation shall be governed as if it were court ordered and pursuant to Fla. Stat. §44.102 et seq, and F.R.C.P. 1.700 et seq as well as any administrative orders in effect from the date the mediator was selected. The parties and counsel also hereby agree that all matters raised in mediation shall remain privileged and confidential unless waived by all parties and the mediator. Also, the parties and counsel further stipulate that the mediator shall be immune from testimony, deposition and liability, including all forms of negligence, whether a Court ordered or voluntary mediation.

**THIS STIPULATION BECOMES BINDING UPON ITS EXECUTION BY THE PARTIES AND THEIR COUNSEL.**

\_\_\_\_\_

Counsel for Claimant: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_, Claimant

Date: \_\_\_\_\_

\_\_\_\_\_

Counsel for Respondent: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_, Respondent

Date: \_\_\_\_\_

**ATTACHMENT "6"**  
**SETTLEMENT AGREEMENT AND STIPULATION OF PARTIES**

**(CLAIM IN LITIGATION)**

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT IN AND FOR  
\_\_\_\_\_ COUNTY, FLORIDA

CIVIL DIVISION

Plaintiff

vs.

Case No:

Division:

Defendants,

\_\_\_\_\_ /

**SETTLEMENT AGREEMENT AND STIPULATION OF PARTIES**

Pursuant to the Mediation Conference held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
the parties have agreed to abide by the following:

1. The Defendant(s) shall pay to the Plaintiff(s) the sum of \$\_\_\_\_\_, in full  
settlement of the Plaintiff(s) cause(s) of action constituting this litigation.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Defendant(s) shall pay said sum through the offices of Plaintiff's counsel of record within  
\_\_\_\_\_ days from the date of this stipulation.

2. The Plaintiff(s) shall voluntarily dismiss this litigation with prejudice and execute  
and deliver to the Defendant(s) and his/her/its/their insurance company through the offices of the

Defendant's counsel of record, General Release(s) and Indemnification Agreement(s) holding the Defendant(s) and his/her/its/their insurance company(ies) harmless from any third party liens or claims for which the Plaintiff(s) was/were able to legally collect and for which the Plaintiff(s) is/are legally liable only. Plaintiff(s) shall be responsible for satisfying and all liens which might apply to these settlement proceeds.

3. Each side shall pay their own costs and fees. Mediation costs will be shared equally between the sides and are payable within ten (10) business days of the mediation.

4. This settlement is contingent upon the clearing of funds and receipt by Defendant's counsel of record of the dismissals, releases and indemnifications required herein.

5. The parties hereby stipulate the mediation shall be governed as if it were court ordered and pursuant to Fla. Stat. §44.102 et seq, and F.R.C.P. 1.700 et seq as well as any administrative orders in effect from the date the mediator was selected. In Federal Court cases, the Local Rules 9.01 – 9.07 of the United States District Court for the Middle District of Florida shall apply. The parties and counsel also hereby agree that all matters raised in mediation shall remain privileged and confidential unless waived by all parties and the mediator. Also, the parties and counsel further stipulate the mediator shall be immune from testimony, deposition and liability, including all forms of negligence, whether a Court ordered or voluntary mediation. (Note: Amend citation to federal local rules based on applicable jurisdiction).

**THIS AGREEMENT SHALL BE FILED WHEN REQUIRED BY LAW OR WITH THE PARTIES' CONSENT. THIS STIPULATION BECOMES BINDING UPON ITS EXECUTION BY THE PARTIES AND THEIR COUNSEL. THIS STIPULATION, IF FILED, SHALL BE ENTERED AS A JUDGMENT OF THE COURT, OR THE COURT SHALL RETAIN JURISDICTION TO ENTER FINAL JUDGMENT OR ENTER AN ORDER DISMISSING THE CAUSE.**

\_\_\_\_\_  
Counsel for Plaintiff: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Counsel for Defendant: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Plaintiff  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Defendant  
Date: \_\_\_\_\_

**ATTACHMENT "7"**

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA  
CIVIL DIVISION

Plaintiff

vs.

Case No:

Division:

Defendants,

\_\_\_\_\_ /

**MEDIATION RESULTS REPORT**

A mediation conference was conducted on the \_\_\_ day of \_\_\_\_, 20\_\_.

- PLAINTIFF/PETITIONER APPEARED, (\_\_\_\_\_)
- DEFENDANT/RESPONDENT APPEARED (\_\_\_\_\_)

PLAINTIFF'S ATTORNEY(S) FIRM:

DEFENDANT'S ATTORNEY(S) FIRM:

MEDIATOR: \_\_\_\_\_, **Certified Circuit Civil Mediator**

- RESULTS:
- FULL SETTLEMENT
  - PARTIAL SETTLEMENT
  - NO SETTLEMENT
  - CONTINUED (DATE) \_\_\_\_\_

LENGTH OF MEDIATION CONFERENCE: \_\_\_\_\_ **hours**

Respectfully submitted via EFile to the Clerk of the Court, with a copy to counsel for the parties (via email only) this \_\_\_ **day of** \_\_\_\_\_ **20**\_\_.

\_\_\_\_\_  
\_\_\_\_\_, MEDIATOR

Florida Mediator Number  
Address  
Phone Number  
Email

**ATTACHMENT "8"**  
**MEDIATION REPORT (FEDERAL)**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
\_\_\_\_\_ DIVISION

Plaintiff(s),

-v-

Case No.

Defendant(s)

**MEDIATION REPORT**

In accordance with the Court's mediation order(s), a mediation conference was held on \_\_\_\_\_, 20\_\_\_\_, and the results of that conference are indicated below:

(a) The following individuals, parties, corporate representatives, and/or claims professionals attended and participated in the mediation conference, and each party possessed the requisite authority:

- All individual parties and their respective trial counsel.
- Designated corporate representatives.
- Required claims professionals.

(b) The following individuals, parties, corporate representatives, and/or claims professionals failed to appear and/or participate as ordered:

\_\_\_\_\_  
\_\_\_\_\_

(c) The outcome of the mediation conference is:

- The case has been completely settled. In accordance with Local Rule 9.06(b), lead counsel will promptly notify the Court of settlement in accordance with Local Rule 3.08 by the filing of a settlement agreement signed by the parties and the mediator within ten (10) days of the mediation conference.
- The case has been partially resolved and lead counsel has been instructed to file a joint stipulation regarding those claims which have been resolved within ten (10) days. The following issues remain for this Court to resolve:

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- The conference was continued with the consent of all parties and counsel. The mediation conference will be held on a date certain not later than ten (10) days prior to the scheduled trial date. Any continuance beyond that time must be approved by the presiding Judge. Mediation Reports will be filed after additional conferences are complete.
- The parties have reached an impasse.

Done this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_, Florida.

\_\_\_\_\_  
Signature of Mediator

\_\_\_\_\_  
Name of Mediator

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
State Telephone Number

**ATTACHMENT "9"**

**MEDIATION STIPULATION AND AGREEMENT**

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, STATE OF FLORIDA  
CIVIL DIVISION

CASE NO.:  
DIVISION:

Plaintiff,

vs.

Defendant.

\_\_\_\_\_ /

**MEDIATION STIPULATION AND AGREEMENT**

The parties below, by and through its undersigned counsel, if any, hereby stipulate that all parties in this case agree to using the following mediator pursuant to the terms, conditions and policies set forth in the Mediation Engagement, Confirmation and Disclosure Agreement:

**Name:** \_\_\_\_\_, **Certified Circuit Court & Federal Mediator**  
**Address:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_  
**Fax:** \_\_\_\_\_

The parties and counsel also hereby stipulate that all matters raised in mediation shall remain privileged and confidential unless waived by all parties and the mediator. Also, the parties and counsel further stipulate the mediator shall be immune from testimony, deposition and liability, including all forms of negligence, whether a Court ordered or voluntary mediation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
\_\_\_\_\_, Esquire  
Counsel for Plaintiff

\_\_\_\_\_  
\_\_\_\_\_, Esquire  
Counsel for Defendant

**ATTACHMENT “10”**  
**RECOMMENDED READING LIST**

**SUGGESTED BOOKS**

- Fisher, R., Ury, W. and Patton, B., *Getting to Yes*, Penguin Books, 1991
- Ury, W., *Getting Past No: Negotiating with Difficult People*, Bantam Books, 1991
- Ury, W., *Getting Past No: Negotiating in Difficult Situations*, Bantam Books, 1993
- Ury, W., *Getting to Peace: Transforming Conflict at Home, at Work and in the World*, Viking, NY, 1999 (Published as the “Third Side”)
- Ury, W., *Getting to Yes with Yourself (And Other Worthy Opponents)*, Harper Collins, 2015

**SUGGESTED LINKS**

- LINK TO HARVARD’S PROGRAM ON NEGOTIATION - <https://www.pon.harvard.edu/>
- MASTER CLASS HARVARD PROGRAMS FOR 2021 -  
<https://www.pon.harvard.edu/freemium/negotiation-master-class-spring-2021-program-guide/>
- HARVARD NEGOTIATION PROJECT ARCHIVES -  
[https://www.pon.harvard.edu/category/research\\_projects/harvard-negotiation-project/](https://www.pon.harvard.edu/category/research_projects/harvard-negotiation-project/)
- HARVARD NEGOTIATION TEACHING RESOURCE CENTER - [tnrc@law.harvard.edu](mailto:tnrc@law.harvard.edu)
- WILLIAM URY’S WEBSITE - <https://www.williamury.com/>
- WILLIAM URY’S TED TALK “ABRAHAM’S WALK”  
[https://www.ted.com/talks/william\\_ury\\_the\\_walk\\_from\\_no\\_to\\_yes](https://www.ted.com/talks/william_ury_the_walk_from_no_to_yes)
- WILLIAM URY’S TALK “THREE SIDES TO EVERY ARGUMENT” - <https://ideas.ted.com/there-are-three-sides-to-every-argument>